IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 2138 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/03/2003 in WP NO : 21640 OF 1999 on the file of the High Court.)

Between:

The Depot Manager,

APSRTC, Ranigunj-I Depot,

Secunderabad.

..... APPELLANT

AND

1. Manzoor Ahmed, S/o. Syed Sadiquee,

E.No. 206242, R/o. Annajiguda,

Ghatkesar Mandal,
Ranga Reddy District.

2 Additional Industrial Tribunal-cum-Additional Labour Court,

Rep. by its Presiding Officer,

Chandravihar Building,
1st Floor, M.J. Road, Hyderabad - 1.

.....RESPONDENTS

For the Appellant: MR.K.HARINATH, Advocate

For the Respondents No.: MR.A.K.JAYAPRAKASH RAO, Advocate

The Court made the following :

ORDER:(per GB,J)

This writ appeal is filed by the A.P.S.R.T.C. assailing the order passed by the learned single Judge in W.P.No.21640 of 1999, dated 03-03-2003.

2. The first respondent was employed as a conductor in A.P.S.R.T.C. While so, he had committed some cash and ticket irregularities while conducting on 30-05-1996 on route No.8A. It was found that the 1st respondent has re-issued the tickets which were already issued. Thereafter an enquiry was conducted and finally he was removed from service by an order dated 11-10-1996. After availing the appeal remedy and review remedy, unsuccessfully, the 1st respondent invoked the jurisdiction of the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947. The Tribunal had adjudicated the matter in ID.No.48 of 1997 and held that the charges as framed against the employee

were proved and that it does not warrant interference by the Tribunal and accordingly passed an award on 14-06-1999 refusing to grant any relief to the employee. Against the said award, the employee carried the matter in the above Writ Petition. The learned single Judge while setting aside the award of the Tribunal partly allowed the Writ Petition and directed the Corporation to reinstate the employee with continuity of service and grant notional increments from the date of removal till the date of reinstatement; against the said order A.P.S.R.T.C. preferred the present writ appeal.

3. It is submitted by the learned Standing Counsel for the appellants that the order passed by the learned single Judge is wholly misconceived. He submits that when the employee has indulged in misconduct relating to cash and ticket irregularities, the learned single Judge could have showed no leniency. In support of his contention he placed reliance on the Full Bench judgment of this Court in V.RAMANA vs. APSRTC[1] and also the Judgment of the Supreme Court in REGIONAL MANAGER, R.S.R.T.C. v. GHANSHYAM SHARMA[2] He would further submit that when the misconduct has been fully established before the Tribunal, the learned single Judge ought not to have interfered with by exercising the power under Article 226 of the Constitution of India. He further submits that it has been held in catena of decisions that the award of the Tribunal need not ordinarily be interfered with under discretionary jurisdiction under Article 226 of the Constitution of India. Therefore, he submits that the order of the learned single Judge is liable to be set aside.

4. On the other hand the learned counsel for the employee submits that the learned single Judge exercised the power under Section 11-A of the Industrial Disputes Act when the Tribunal failed to exercise the same properly and it is always open for this Court under Article 226 of the Constitution of India to exercise the power under Section 11-A of the Industrial Dispute Act, 1947, when the Tribunal failed to exercise the same. Thus granting of relief cannot be said to be either illegal or contrary to law.

5. We have heard the learned counsel for the parties at length.

6. It is trite to say that when the misconduct of the employee has been established, he is liable for punishment. However, the punishment is liable to be scrutinized under Section 11-A of Industrial Disputes Act, 1947. The said power is to be exercised cautiously and with great circumspection. In the instant case though the Tribunal itself refused the relief to the employee, the learned single Judge has granted the relief. In such an event it has to be considered whether the order of the learned judge is sustainable in law.

7. The decisions of the Supreme Court are very categorical on this aspect. When once the misconduct is established, the Labour Court can grant no relief. In the decision relied on by the learned Standing Counsel in REGIONAL MANAGER, RSRTC vs. GHANSHYAM SHARMA[3] it was found that the conductor has been committing such misconduct very frequently and therefore in such circumstances the Supreme Court held that the employee is not entitled for any relief and the Labour Court interfering with the quantum of punishment under Section 11-A of the Industrial Disputes Act, 1947 was not justified. But in the instant case it is brought to the notice of this Court that it is for the first time the employee has committed such a misconduct and therefore the matter has to be viewed leniently taking into consideration the preceding and attendant circumstances. Therefore we are of the considered view that the order of the learned single Judge directing reinstatement of the worker is not sustainable in law. But however, we find that since this is the first misconduct committed by the 1st respondent, interest of justice will be met if the 1st respondent is appointed afresh as a conductor and he will not be entitled for any benefit of past service.

8. The Writ Appeal is disposed of accordingly with the above directions. No order as to costs.

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G.BIKSHAPATHY, J

Dated: 07.07.2004

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B.SESHASAYANA REDDY,J

LSK

One fair copy to the Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal).

To

1.The Depot Manager,

APSRTC, Ranigunj-I Depot,

Secunderabad.

2. The Presiding Officer,

Additional Industrial Tribunal-cum-Additional Labour Court,

Chandravihar Building,

1st Floor, M.J.Road, Hyderabad-1

3.Two C.D.Copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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